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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 655

JAMES D. HODGSON, SECRETARY OF LABOR, PETITIONER

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL–CIO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (A. 50–55) is reported at 426 F.2d 969. The opinion of the district court (A. 34–37) is unreported.

JURISDICTION

The judgment of the court of appeals (A. 56) was entered on May 8, 1970. On July 30, 1970, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to September 8, 1970. The petition was filed on September 4, 1970, and granted December 7, 1970 (A. 56). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in an action to set aside a union election pursuant to Title IV of the Labor-Management Reporting and Disclosure Act of 1959, the Secretary of Labor may allege only those violations of the Act which were protested internally by the complaining union member, or whether he may also allege additional violations disclosed by his investigation which he has given the union an opportunity to correct.

2. Whether a union rule restricting candidacy for local office to those members who have attended at least 50 percent of the local union meetings during the three-year period preceding nominations is a "reasonable qualification uniformly imposed" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, notwithstanding that (a) it renders nearly 90 percent of the membership ineligible to seek office, and (b) it imposes an unequal burden on members working on different shifts, and enables some members to qualify without attending any meetings at all by having their absences excused because of the performance of overtime work.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 481, 482, are set forth in the Appendix, *infra*, pp. 27–29.

STATEMENT

The Secretary of Labor instituted this action against the respondent Local Union under Title IV

of the Labor-Management Reporting and Disclosure Act of 1959 to set aside the general election of officers conducted by the Local Union on June 12, 1967. The United Steelworkers of America (respondent "International Union") intervened as a party defendant (A. 10–11).

Following the election Nicholas Hantzis, an unsuccessful candidate for the office of president, protested the conduct of the election to the Local Union and then to the International Union, in accordance with the International Union's Constitution and By-Laws (A. 44). His internal protest complained of several matters, including the use of union facilities to prepare campaign literature for the Local Union's incumbent president (A. 44). After failing to obtain relief, Hantzis filed a complaint with the Secretary of Labor on October 12, 1967, pursuant to Sec. 402(a) of the Act (29 U.S.C. 482(a)) (App., *infra*, p. 28). The complaint again charged illegal use of union facilities and added a specific charge that an unreasonably restrictive meeting attendance requirement had been imposed as a condition of candidacy in the election (A. 44).[1]

The Secretary's investigation of Hantzis' complaint substantiated the charge that union facilities had been used improperly to promote the re-election of the Local Union's President, in violation of Section 401(g) of the Act (29 U.S.C. 481(g)). The Secretary also found that the meeting attendance requirement was not a reasonable qualification on the right of members to hold office and that the requirement had not been imposed uni-

[1] In his internal protest, Hantzis did not directly challenge the meeting attendance requirement, but did complain of the manner in which it was applied. See note 2, *infra*, p. 5.

formly (A. 44). The Secretary advised both respondents of these findings by letter dated November 21, 1967, and invited them to discuss the findings and to propose voluntary remedial action (A. 43–44). In order that the parties might fully discuss the findings and attempt resolution of the issues raised without litigation, the respondents, by letters dated November 22, 1967, December 26, 1967, and January 30, 1968, agreed to extend until March 1, 1968, the time in which suit might be filed by the Secretary of Labor to set aside the election (A. 5). On December 18, 1967, and again on January 30, 1968, representatives of the Secretary met with representatives of the respondents to discuss the investigative findings (A. 45). When respondents refused to undertake remedial measures, the Secretary filed this suit on February 29, 1968. The complaint alleged that the respondent Local Union had violated Section 401(e) of the Act (29 U.S.C. 431(e)) (App. infra, pp. 27–28) by imposing an unreasonable meeting attendance qualification on the right of its members to be candidates and to hold office, and by failing to impose that qualification uniformly, and further alleged that union funds had been expended to promote the candidacy of the incumbent president in violation of Section 401(g) of the Act (29 U.S.C. 481(g)) (A. 5–6).

The qualification which the Secretary sought to challenge, as set forth in the International Union's Constitution and its Standard By-Laws for Local Unions, requires a candidate for local union office to have attended at least one-half of the regular Local Union meetings held during the 36 months preceding the

election "unless his Union activities or working hours prevented his attendance (A. 35, 167)." The 36-month period was not applicable to the respondent Local Union because it was not chartered until May 1965 (A. 36). Respondent International ruled that, in order to qualify as candidates in respondent Local Union's 1967 election, members must have attended or received credit for attending at least eleven of the 21 local union meetings held between August 1965 and April 1967 (A. 36).[2]

At the time of its 1967 election respondent Local Union had nearly 600 members who were employed by Howmet Corporation, Aerosystems Division, Loud Products. Approximately 400 members worked on the day shift from 7:00 a.m. to 3:30 p.m. About 200 members worked on the swing shift, whose regular working hours were 3:30 p.m. to midnight. A third shift of seven or eight employees worked during the early morning hours. (A. 36). Respondent Local Union held its monthly meetings in two sessions: one for the day shift, at 7:00 p.m. on the second Monday of each month, and one for the swing shift, beginning at various times between 12:30 a.m. and 1:00 a.m. on the second Tuesday of each month.

[2] In his internal protest Hantzis complained about the failure to include the Local Union's May and June 1965 meetings in applying the requirements (A. 168–174).

Members on the swing shift frequently worked overtime until 1 or 2 a.m., and were credited with excused absences and counted as having attended the meetings when they worked past the scheduled starting time. (A. 39–40). In January 1967, the starting time for the swing shift meeting sessions was changed to 1:00 p.m. (A. 36–37). Attendance at the day shift meetings averaged 46 members. From August 1965 through December 1966 an average of 25 members attended the swing shift meetings. When the swing shift meeting was changed in January 1967, attendance dropped to an average of 14 members. (A. 37).

Respondent Local Union's meeting attendance register showed that only 36 of the Local Union's 600 members, including nine officers, had actually attended the required eleven or more meetings. The district court estimated that 24 of the 200 swing shift employees satisfied the meeting attendance requirement by reason of absences excused for overtime work. (A. 38). Day shift employees could not obtain meeting attendance credits for overtime work, since they were never required to work until 7:00 p.m. (A.).

At the nomination meetings held by respondent Local Union, 49 members were nominated for office (A. 38). Among the 22 members who declined nomination was Marvin E. Wright, who declined because he thought he was ineligible since he had not attended any union meetings. In fact, Wright, who was employed on the swing shift, had sufficient overtime work credits to satisfy the meeting attendance requirement.

(A. 39). The Election Committee reviewed the attendance register to ascertain the eligibility of the remaining 27 nominees. If a nominee had not attended 11 meetings, the Committee requested his foreman to review the company's work records to determine whether he had worked up to or past the scheduled meeting time on any meeting nights. The Election Committee ruled four nominees ineligible: George Pruneri, Elmer Husman, Ray Mahan and Glenn Ross, who attended five, nine, six and seven meetings, respectively. Ross, who should have been credited with six excused absences for overtime work, was erroneously disqualified. Ed Poynter, who had attended only eight meetings and lacked sufficient credits for overtime work, was erroneously ruled eligible, and ran unsuccessfully for the office of Outside Guard. (A. 40–41, 43).

At the trial, an expert witness for the government testified that a study of the constitutions of 72 national and international unions including 90 percent of the country's total union membership showed that only twelve of these unions imposed a constitutional requirement of attendance at meetings as a qualification of candidacy for local offices, and that respondent International Union is one of only two such unions specifying a meeting attendance requirement covering a period as long as three years (A. 135–136). He also testified that, in his opinion, attendance at union meetings is not necessary to give members knowledge of the union's affairs, and that meeting attendance qualifications have not operated to increase attendance at

union meetings (A. 143–145). Respondents introduced no contrary evidence, and presented no testimony to support their contention that members who attend union meetings are better qualified to serve as officers than those who do not.

After trial, the district court held that the use of union facilities to reproduce campaign literature of the Local Union's incumbent president violated Section 401(g) of the Act (29 U.S.C. 481(g)), and ordered a new election for the office of president under supervision of the Secretary (A. 48). The court ruled that the Secretary could properly include in his complaint the charge that the meeting attendance qualification was unreasonable, since he had afforded respondents adequate notice and an opportunity to remedy the alleged violation before filing suit (A. 46). The court held, however, that the meeting attendance qualification was reasonable, since it was "designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of the union," and "because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision" (A. 38).

The court of appeals affirmed. It held that the Secretary lacked standing to challenge the meeting attendance qualification, since it had not been questioned in the complaining member's internal protest, and "Congress intended to empower the Secretary to assert those violations that are fairly apparent from a

member's protest to the union and no others" (A. 53). The court of appeals, accordingly, found it unnecessary to consider whether the attendance requirement violated the Act (A. 52–53).

SUMMARY OF ARGUMENT

I

The court of appeals erred in holding that the Secretary of Labor, in an enforcement action under Section 402 of the Labor-Management Reporting and Disclosure Act of 1959, cannot allege violations which were not included in the union member's internal complaint. This restrictive interpretation of the Secretary's authority is inconsistent with the language of Section 402, which empowers the Secretary to bring a complaint if he finds that *a* violation has occurred. And, although the Court explicitly declined to decide this precise issue in *Wirtz* v. *Local Union No. 125, Laborers' International Union,* 389 U.S. 477, the Court's opinion in that case explained that, in view of the Secretary's exclusive authority in this area and the broad investigative powers conferred on him, it is "most improbable that Congress * * * intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint * * *." 389 U.S. at 482. The court of appeals' interpretation is also inconsistent with the Secretary's "vital role * * * in protecting the public interest * * *" as opposed to protecting merely the interest of individual complaining union members, 389 U.S. at 483, and with the con-

cept articulated by this Court in *Wirtz* v. *Local 153, Glass Bottle Blowers Association*, 389 U.S. 463, 473, that "Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, once warranted, effective in carrying out the basic aim of Title IV."

Our position is entirely consistent with the statutory requirement that union members exhaust their internal remedies before filing a complaint with the Secretary. This exhaustion requirement is significantly different from a statutory provision which requires exhaustion of the remedies of an administrative agency. Such statutes are designed to make use of the particular expertise of the relevant agency; that purpose is served under the present Act by the Secretary's investigation and determination of whether to bring a lawsuit, rather than by the requirement that there must be a complaining union member who has exhausted internal union remedies. The latter requirement is intended merely to assure that, if all members of the union are satisfied, the results of the election will remain undisturbed. Moreover, in the present case, the Secretary gave the respondent unions a full three months to take voluntary remedial action with respect to the charges which the Secretary later brought in this lawsuit.

II

The meeting attendance qualification on candidacy under consideration in this case is not a "reasonable

qualification uniformally imposed", as required by Section 401(e). As the Court explained in *Wirtz v. Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, 499, "[t]he check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." Here nearly 90 percent of the union members were rendered ineligible by the meeting attendance requirement; in our view this fact alone prevents the respondents from meeting their burden of showing that the attendance requirement falls under this Court's narrow definition of the term "reasonable qualification uniformly imposed". Respondents' purported justification for the requirement—that it was designed to insure that candidates for union office are familiar with union problems—incorrectly "assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's performance in other [union affairs]." *Hotel Employees, supra*, 391 U.S. at 504. Furthermore, the union here is not even "faithful to its own premise," 391 U.S. at 504, because a member who is excused from meetings by reason of working overtime is permitted to run for any office without having actually attended any meetings.

ARGUMENT

I. THE SECRETARY OF LABOR IS NOT RESTRICTED TO ALLEGING ONLY THOSE VIOLATIONS WHICH WERE INTERNALLY PROTESTED BY THE COMPLAINING UNION MEMBER; IN THIS CASE HE PROPERLY INCLUDED AN ADDITIONAL VIOLATION DISCLOSED BY HIS INVESTIGATION WHICH HE FIRST AFFORDED THE UNION AN OPPORTUNITY TO REMEDY

In *Wirtz* v. *Local Union No. 125, Laborers' International Union*, 389 U.S. 477, this Court held that the Secretary's power to institute an action to invalidate a union election is not limited to the particular allegation made by a complaining union member. The specific issue presented in that case was whether the Secretary could challenge violations which allegedly had occurred during a union general election, even though the internal union complaint had involved only the runoff election held five weeks later. The Court unanimously held that the Secretary was entitled to challenge the general election because, on the facts of that case, the "union had fair notice from the violation charged by (the union member) in his protest of the runoff election that the same unlawful conduct probably occurred at the earlier election as well." 389 U.S. 477, 481. The Court explicitly found it unnecessary to consider in *Laborers' International* whether "a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered

in his investigation of the member's complaint." 389 U.S. at 482.[3]

Although the precise question involved here was thus not decided in *Laborers' International,* the restrictive interpretation of the Secretary's authority adopted by the court below is inconsistent with the purpose of

[3] Our position is that the Secretary may bring suit with respect to any violation he finds in the course of his investigation whether or not that violation is alleged in the internal complaint or in the union members' complaint to the Secretary. This position has been upheld in *Shultz* v. *Local Union 1299, United Steelworkers*, 73 LRRM 2673, 62 L.C. ¶10,720 (E.D. Mich.); *Shultz* v. *Local #1150, United Steelworkers*, 75 LRRM 2869, 64 L.C. ¶ 11,288 (S.D. Ind.); *Wirtz* v. *Independent Petroleum Workers, Inc., Local 1, I.O.W.U.*, 307 F. Supp. 462 (N.D. Ind.); same case, 75 LRRM 2340, 63 L.C. ¶11,190. See, also, *Wirtz* v. *Local 1377, IBEW*, 63 LRRM 2029, 54 L.C. ¶11,391 (N.D. Ohio).

Several district court decisions have held that the Secretary cannot bring suit if the alleged illegality which is the basis of the suit has not been presented to the union for action prior to the initiation of suit. *E.g., Wirtz* v. *Local Union 169, International Hod Carriers*, 246 F. Supp. 741 (D. Nev.); *Wirtz* v. *Local Unions No. 406, etc., Operating Engineers*, 254 F. Supp. 962 (E.D. La.); *Wirtz* v. *Local Union No. 450, etc., Operating Engineers*, 63 LRRM 2105, 54 L. C. ¶11,451 (S.D. Tex.). These cases did not hold, however, that the Secretary was barred from seeking effective relief merely because the full ramifications of the illegality were not specified in the internal complaint. They, in fact, allowed relief as to "every issue which the defendant union had a fair opportunity to consider and resolve." *Wirtz* v. *Local Union 169, supra*, 246 F. Supp. at 752; *Wirtz* v. *Local Union No. 1622, etc.*, 285 F. Supp. 455 (N.D. Cal.). The court of appeals for the Second Circuit has held that the Secretary cannot seek to invalidate an election upon a ground which was not raised in the union members' complaint to the Secretary. *Local Unions No. 545, etc., International Union of Operating Engineers* v. *Wirtz*, 381 F. 2d 448. We disagree with this restriction on the Secretary's power under Section 402 as well as with the closely related restriction under consideration in the present case.

Title IV of the Labor-Management Reporting and Disclosure Act of 1959 as articulated in this Court's opinion in *Laborers' International.* And, as the Court there pointed out in rejecting the union's contention that the Secretary is limited to the allegations made in the union member's initial complaint, "neither the language of the statute nor its legislative history" supports such a restrictive view of the Secretary's role.

Indeed, the statute does not, in terms, limit the Secretary's investigation or his authority to institute suit to the violation alleged in the complaint. It empowers him to bring a civil action, after investigating the union member's complaint, "if he finds probable cause to believe that *a* violation of this title has occurred * * *" (Section 402(b), *infra,* pp. 28–29) (emphasis added). It is significant that the statute is not limited to "the violation alleged" but is framed in terms which entitle the Secretary to proceed, after a protest has been made to the union and rejected, if he finds *any* violation to have occurred. This language was deliberately chosen by Congress. A prior draft of the bill (S. 1002, 86th Cong. 1st Sess., 105 Cong. Rec. 2067) had provided that if the union member alleged a violation of the Act, the Secretary was to investigate "such allegation" and institute an action if he found probable cause to believe such allegation is true. But under the language ultimately adopted, the Secretary's responsibility is not similarly qualified; he is, instead, as the Senate Report explained,

"to investigate the complaint and determine whether there is probable cause to believe that an election was not held in conformity with the requirements of the bill" (S. Rep. No. 187, 86th Cong., 1st Sess., 21).

Congress' choice of the broader formulation was consistent with the legislative scheme of the Act as a whole, which entrusted enforcement of Title IV exclusively to the Secretary of Labor. Congress rejected proposed bills which would have made Title IV rights enforceable by private suit (H.R. 8342, 86th Cong., 1st Sess., 105 Cong. Rec. 15887; S. 748, 86th Cong., 1st Sess., 105 Cong. Rec. 1276), and "decided to utilize the special knowledge and discretion of the Secretary of Labor in order best to serve the public interest" (*Calhoon* v. *Harvey*, 379 U.S. 134, 140).

While the Secretary may act only in response to a complaint by a member of the union, it would, in our view, make little sense to restrict the scope of the lawsuit brought by the Secretary to the four corners of the complaint the union member originally made. As this court recognized in *Laborers' International*, union members do not, as a rule, file carefully drafted complaints. 389 U.S. at 482. Consequently, if the complaint were the measure of the Secretary's powers, he would often be artificially limited, as here, by technical flaws in that document or by the individual member's failure to appreciate the full scope or consequences of the violation of which he is complaining. Indeed, his investigation of the complaint is not

so limited [4] and, as this Court noted in the *Laborers' International* case,

> it is most improbable that Congress deliberately settled exclusive enforcement jurisdiction on the Secretary and granted him broad investigative powers to discharge his responsibilities, yet intended the shape of the enforcement action to be immutably fixed by the artfulness of a layman's complaint which often must be based on incomplete information. The expertise and resources of the Labor Department were surely meant to have a broader play. [389 U.S. at 482.]

Furthermore, as a practical matter, the member's protest ordinarily encompasses a particular grievance which has contributed to his own or his faction's failure to attain office in an election. The broader public interest whose enforcement is entrusted to the Secretary is not so narrowly oriented. See Beaird, *Union Officer Election Provisions of the Labor-Management Reporting and Disclosure Act of 1959,* 51 Va. L. Rev. 1306, 1329–1330. The effect of restricting the Secretary to pursuing only those violations alluded to in the member's protest would be to subordinate the broader public interest to the private motivation of the complaining member. The Secretary's position, that his authority is not so confined, is plainly more consistent with the remedial purpose of Title IV. As this Court observed in the *Laborers'* case:

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[4] The Secretary's investigation is not limited by the subject matter or scope of the complaint received, or of the preceding internal union protest. *Wirtz* v. *Local 191, International Bro. of Teamsters,* 321 F. 2d 445 (C.A. 2); *Local 57, International Union of Operating Engineers* v. *Wirtz,* 346 F. 2d 552 (C.A. 1).

> [S]o to constrict the Secretary would be inconsistent with his vital role * * * in protecting the public interest bound up in Title IV. The Act was not designed merely to protect the right of a union member to run for a particular union office in a particular election. Title IV's special function in furthering the general goals of the LMRDA is to insure free and democratic union elections, the regulations of the union electoral process enacted in the Title having been regarded as necessary protections of the public interest as well as of the rights and interests of union members. [389 U.S. at 482–483.] [5]

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[5] In the *Laborers'* case (389 U.S. at 483), the Court also recognized an analogy between the Secretary's role under Title IV of the Labor-Management Reporting and Disclosure Act of 1959 and that of the General Counsel of the National Labor Relations Board in investigating unfair labor practices, which he may do only after receipt of a charge. Pertinent, therefore, is the Court's discussion of the role of the Board's General Counsel, in *Labor Board* v. *Fant Milling Co.*, 360 U.S. 301, 307–308:

"A charge filed with the Labor Board is not to be measured by the standards applicable to a pleading in a private lawsuit. Its purpose is merely to set in motion the machinery of an inquiry. * * * The responsibility of making that inquiry, and of framing the issues in the case is one that Congress has imposed upon the Board, not the charging party. To confine the Board in its inquiry and in framing the complaint to the specific matters alleged in the charge would reduce the statutory machinery to a vehicle for the vindication of private rights. This would be alien to the basic purpose of the Act. The Board was created not to adjudicate private controversies but to advance the public interest * * *.

"Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. * * *"

The present case illustrates the extent to which the holding of the court of appeals could undermine the effectiveness of the Title IV remedy. The violation protested by Hantzis was, in the Secretary's view and in the view of the district court and the court of appeals, sufficient justification for setting aside the election of respondent Local Union's president. In a supervised election, the Secretary must seek to correct all defects in the first election, to "prevent the unfairness in the first election from infecting, directly or indirectly, the remedial election" (see *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 389 U.S. 463, 474). Furthermore, Section 402(c) of the Act requires that a supervised election be held "so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization." However, in the view of the court below, the Secretary must supervise an election in accordance with provisions of the organization's by-laws which he deems unlawful unless there has been a specific complaint by a member to the union about such provisions.[6]

Moreover, in the absence of a judicial determination that the qualification at issue is unreasonable, it will almost surely be imposed again in the union's next

[6] We recognize that theoretically the Secretary could raise the question concerning the validity of particular constitutional provisions in supplementary proceedings in connection with the conduct of the supervised election. However, this course would undermine the congressional intent that supervised elections, once ordered, should be held without delay. See Section 402(d) (29 U.S.C. 482(d)), which provides that an order directing an election, while appealable, shall not be stayed pending appeal.

regular election, and thereafter in succeeding elections unless a member is moved to protest it specifically. This result is plainly inconsistent with this Court's observation in *Wirtz* v. *Local 153, Glass Bottle Blowers Association,* 389 U.S. 463, 473, that "Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, once warranted, effective in carrying out the basic aim of Title IV."

As a practical matter, the statutory time schedule [7] effectively precludes the Secretary from inviting a complaining member, or another member, of the union to re-invoke internal remedies with respect to violations outside the scope of the initial protest disclosed by his investigation. But even if it were feasible, such a procedure would not serve any of the statutory objectives. While Section 402(a) authorizes the Secretary to step in only at the request of a union member who has exhausted internal union remedies, it does not endow the union with any fact-finding or policy-determining functions. Its exhaustion requirement is significantly different from a statutory provision which requires exhaustion of the remedies of a governmental administrative agency or which vests primary jurisdiction over a dispute in such an agency. Such statutes are designed, in varying degrees, to assure a leading role for the expert agency in finding

[7] Section 402(b) of the Act provides that after a complaint is filed with the Secretary, he has sixty days in which to conduct an investigation of the complaint and bring an action against the union.

the facts, interpreting the facts, initially construing the statute and, in general, contributing to uniformity in the administration of the law.

To the extent that any of these purposes are to be served under the present Act, they are served by the Secretary's investigation and determination of whether to bring a lawsuit, rather than by the requirement that there must be a complaining union member who has exhausted internal union remedies. Congress has, of course, not conferred any form of governmental authority over these disputes on the unions, whose officers tend to have an adversary interest in such disputes; and it is obvious that the various unions involved in such disputes, with their diversity of views and of internal remedies,[8] could not be expected to play a role comparable to that of a single, expert administrative agency in promoting consistency in the Act's interpretation or administration.

Indeed, as this Court has explained, the exhaustion requirement of Section 402(a) is basically intended only to assure that the results of union elections will not be disturbed if they are satisfactory to all members of the union or if dissatisfaction with the results can be adequately alleviated through internal union remedies. See *Laborers' International, supra,* 389 U.S. 484. Petitioner has been mindful here of the congressional intent to preserve "a maximum amount of independence and self-government by giving every international union the opportunity to correct improper local elections" (S. Rep. No. 187, 86th Cong., 1st

[8] See, generally, *An Analysis: Local Union Election Appeals,* Department of Labor, 1966.

Sess., 21). He did not begin his investigation until he had satisfied himself that Hantzis had invoked his internal union remedies. In addition, he has adopted the practice, followed in this case, of notifying the union and its parent organization in advance of filing suit of all violations disclosed by his investigation, and giving the union at that time the opportunity to take voluntary corrective action. In the present case, the respondent unions were first notified of the Secretary's findings by letter dated November 21, 1967. The Secretary, after agreeing to three successive extensions of time, filed this suit on February 29, 1968. Thus, the respondents had a full three months—the equivalent of the time alloted to them under Section 402(a)(2) for consideration of a member's protest—to offer voluntary remedial action. Their proffered defense, therefore, is not that they lacked an opportunity to consider and rectify all the violations alleged in the Secretary's complaint, but only that such opportunity was presented to them by the Secretary following his investigation and not in the member's initial protest. Congress surely did not intend that this technical distinction would defeat the dominant statutory purpose of insuring "free and democratic union elections" (*Laborers' International, supra,* 389 U.S. at 483).

II. RESPONDENTS' RULE REQUIRING A CANDIDATE FOR LOCAL UNION OFFICE TO HAVE ATTENDED AT LEAST ONE-HALF OF THE LOCAL UNION MEETINGS HELD DURING A THREE-YEAR PERIOD "UNLESS HIS UNION ACTIVITIES OR WORKING HOURS PREVENTED HIS ATTENDANCE" WAS NOT A REASONABLE QUALIFICATION UNIFORMLY IMPOSED

Because of its national importance in the administration of the Act, we have asked this Court—and re-

spondents have joined in this request (Br. Opp. 16)—also to decide the substantive issue left unresolved by the court below: whether the meeting attendance qualification on candidacy applied in the challenged election is a "reasonable qualification uniformly imposed," as required by Section 401(e).[9] This question was decided by the district court,[10] and the record as to it is complete (see Statement, *supra*, p. 8).

In our view, the district court's decision reflected a basic misunderstanding of the principles governing the determination whether restrictions on candidacy for local union office are reasonable. In *Wirtz* v. *Hotel, Motel and Club Employees Union, Local 6*, 391 U.S. 492, this Court held invalid a union bylaw which limited eligibility for certain major union offices to members who had served in one or more elective offices. The Court emphasized the congressional intent to keep union leadership responsive to the membership through the election process, and stated that "The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499. "[G]iven the objective of Title IV," the Court held, "a candidacy limitation which renders 93% of

[9] This issue was presented by the second question of the petition, which was granted without limitation.

[10] Two other district courts have followed the decision of the district court in the instant case, permitting the Secretary to challenge the validity of the rule even though it was not challenged in the union complaint, but upholding its reasonableness. *Shultz* v. *Local Union 1299, Steelworkers*, 73 LRRM 2673, 62 L.C. ¶10,720 (E.D. Mich.); *Shultz* v. *Local #1150, Steelworkers*, 75 LRRM 2869, 64 L.C. ¶11,288 (S.D. Ind.).

union members ineligible for office can hardly be a 'reasonable qualification' ". *Id.* at 502.

We submit that the qualification imposed in the instant case is unreasonable under the standard set forth by this Court in the *Hotel Employees* case. Nearly 90 percent of the union members here were rendered ineligible by the meeting attendance rule, a fact which, in the absence of extraordinary circumstances, would seem to render the qualification invalid *per se*. The district court concluded that the rule was not unreasonable "because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision" (A. 38). However, in the case of employees whose work schedules do not qualify them for the excuse provision, compliance with the rule requires a considerable effort on the part of the would-be candidate over an extended period of time preceding the election.[11] If controversial issues were to arise within the year preceding the election, an opposition group might be unable to muster a slate of candidates with sufficient foresight to have accumulated the nec-

[11] In the present case, the local union had been in existence for only two years before the election, so that candidates were required to have attended (or to have been excused from) 11 out of 21 monthly meetings. Even under this shortened version of the three-year rule in the International Constitution, a member would have to begin attending every subsequent meeting nearly a year before the election in order to qualify. Had the International rule been in full force and effect, a member would have to begin attending meetings, and then to attend every single meeting held, for a full 18 months in order to be a candidate. See *Wirtz* v. *Independent Workers Union of Florida*, 65 LRRM 2104, 55 L. C. ¶11,857 (M.D.) Fla.).

essary meeting credits. Respondents' argument to the courts below—that the attendance requirement was designed to insure that candidates for union office are familiar with and interested in union problems—[12]

> assumes that rank-and-file union members are unable to distinguish qualified from unqualified candidates for particular offices without a demonstration of a candidate's performance in other [union affairs]. But Congress' model of democratic elections was political elections in this country, and they are not based on any such assumption. Rather, in those elections the assumption is that voters will exercise common sense and judgment in casting their ballots. * * * [*Hotel Employees, supra,* 391 U.S. at 504.] [13]

The Court stated in *Hotel Employees* that "Congress plainly did not intend that the authorization in §401(e) of 'reasonable qualifications uniformly imposed' should be given a broad reach." 391 U.S. at 499. This authorization, like exceptions to other remedial legislation, should be narrowly construed, and the burden of proof should rest upon the party asserting it. See, *e.g., Phillips Co.* v. *Walling,* 324 U.S. 490, 493; *Mitchell* v. *Kentucky Finance Co.,* 359 U.S. 290, 295. Respondents here not only failed to intro-

[12] While the district court also held that the attendance requirement was justified on the ground that it was "designed to increase attendance at meetings" (*supra*, p. 8), it would, of course, be possible for the union to devise other inducements or sanctions to encourage attendance which would not interfere with the representative character of union elections.

[13] See, also, *Wirtz* v. *Local Union 262, Glass Bottle Blowers Ass'n* 290 F. Supp. 965, 968 (N.D. Cal.).

duce evidence that union members become better qualified to hold union office by attending meetings, but also failed to rebut expert testimony in this record to the contrary. See *supra,* pp. 7–8. As in *Hotel Employees,* the respondent unions have failed to sustain their burden. Cf. 391 U.S. at 503.

Moreover, here, as in *Hotel Employees,* the union "is not faithful to its own premise." 391 U.S. at 504. In *Hotel Employees,* a member could be *appointed* to any office without satisfying the prior office-holding requirement. In this case, a member could be eligible as a candidate without ever having attended a single meeting, provided that he was employed on the swing shift and was called upon to work overtime on a sufficient number of meeting nights. In addition, the meeting attendance requirement operates to discriminate against day-shift employee members, who are never entitled to take advantage of the work excuse provision. Cf. *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n,* 244 F. Supp. 745, 748 (W.D. Pa.), reversed on other grounds, 405 F.2d 176 (C.A. 3). Since the union electorate is thus entrusted with the evaluation of whatever bearing they deem swing shift candidates' non-attendance of meetings to have on their qualifications for office, there is obviously no reason why the voters cannot similarly make their own evaluation of the relative importance of other candidates' attendance or nonattendance.[14]

[14] We also argued in the courts below that the qualification was not uniformly imposed in this particular election because one candidate was disqualified notwithstanding a combined record of meeting attendance and excused absences which satisfied the requirement, while another member was permitted to be a can-

CONCLUSION

The decision of the court of appeals should be reversed and the case remanded to the district court with directions to order an election under the supervision of the Secretary.

ERWIN N. GRISWOLD,
Solicitor General.

L. PATRICK GRAY, III,
Assistant Attorney General.

LAWRENCE G. WALLACE,
Deputy Solicitor General.

RICHARD B. STONE,
Assistant to the Solicitor General.

PETER G. NASH,
Solicitor,

GEORGE T. AVERY,
Associate Solicitor,

BEATE BLOCH,
CORNELIUS S. DONOGHUE, JR.,
Attorneys,
Department of Labor.

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didate although he did not satisfy the requirement, either by actual attendance at meetings or by a combination of attendance and excused absences (see *supra*, p. 7). The district court found that these aberrations were the result of "honest, unintentional mistakes". This finding, however, is not a defense under the Act, which requires uniform application of eligibility qualifications, regardless of intent or motive. See *Wirtz* v. *Local 191, International Brotherhood of Teamsters, etc.*, 226 F. Supp. 179, 186 (D. Conn.); *Wirtz* v. *Independent Workers Union of Florida*, 65 LRRM 2104, 55 L.C. ¶11,857 (M.D. Fla.). Since uniformity is basic to democratic and free elections, the district court erred in ruling that these errors in the conduct of the election did not warrant setting it aside.

APPENDIX

STATUTES INVOLVED

The Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. 401 *et seq.*, provides in pertinent part:

TITLE IV. ELECTIONS

TERMS OF OFFICE; ELECTION PROCEDURES

* * * * *

SEC. 401. (b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

* * * * *

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bar-

gaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this title.

* * * * *

ENFORCEMENT

SEC. 402. (a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body or,

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation.

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 401 (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this title has occurred and has not been remedied, he shall,

within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this title and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 401, or

(2) that the violation of section 401 may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of section 401, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

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